

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Civil Revision No.6920 of 2014
Date of Decision: December 15, 2015

Kashmir Singh & another

...Petitioners

Versus

Avtar Krishan & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr.Vikas Kumar, Advocate,
for the petitioners.

Mr.Sandeep Khunger, Advocate,
for respondent No.2.

AMIT RAWAL, J. (Oral)

Petitioner-plaintiffs are aggrieved of the order dated 1.9.2014 (Annexure P-4), vide which the application filed by defendant-respondent No.2 seeking cross-examination of the attesting witness to the agreement to sell dated 8.12.1996, has been allowed.

Mr.Vikas Kumar, learned counsel appearing on behalf of the petitioner-plaintiffs submits that defendant-respondent No.2 was proceeded *ex-parte* vide order dated 5.2.2009 along with other defendants. On an application moved under Order 9 Rule 7 CPC and as well as the statement suffered by Mr.Y.P.Nanda Advocate for defendant No.2, the trial Court granted liberty to respondent No.2 to cross-examine the plaintiff and scribe of the agreement to sell. He has drawn the attention of this Court to the

statement suffered by the counsel, which reads thus:-

Statement of Sh.Y.P.Nanda, Advocate for the defendant No.2.

Stated that no new written statement shall be filed on behalf of Balraj/defendant no.2. Written statement filed by defendant No.1 be read as written statement of defendant no.2. I shall only cross examine the scribe of the agreement and plaintiff on behalf of defendant no.2 and no other witness shall be cross examined.”

He further submits that Mr.Y.P.Nanda Advocate was also representing other respondents and, therefore, the plea taken in the application seeking permission of the Court to examine the other witness to the agreement was not sustainable as he was aware of the fact that the plaintiffs had examined other witness of the Will and, thus, prays that the application was misplaced and wholly belated, but an attempt is to protract adjudication of the trial.

Mr.Sandeep Khunger, learned counsel appearing on behalf of defendant-respondent No.2 submits that the statement suffered by the counsel was on the basis of the pleadings made in the reply to the application filed under Order 9 Rule 7 CPC. In this context, he has drawn the attention of this Court to para 7 of the reply (additional plea), which reads thus:-

“7. That all the witnesses of the plaintiffs have been examined and the plaintiffs have closed his evidence. One of the attesting witness of the agreement had already died after the examination in the court. The writer of the agreement in question has become very weak and due to his ill health condition he is not unable to again come in the witness box, the plaintiffs have filed the suit in the month of November, 2008 and five and half years have elapsed but the defendants did not allow to proceed the case further.”

He, thus, prays for dismissal of the revision petition.

I have heard the learned counsel for the parties and appraised the paper book.

On going through the contents of the reply, extracted above, it is evident that the plaintiffs had categorically stated that only one witness to the agreement to sell has been examined and the health condition of the scribe of the agreement is very weak. It is in these circumstances, respondent No.2 had suffered a statement. It is revealed that the plaintiffs had actually examined another witness to the agreement to sell, who was alive.

I am of the view that respondent No.2 was made to draw impression as per the averments made in para 7, *ibid*. No doubt, the trial Court vide order dated 13.8.2014 allowed respondent No.2 to join the proceedings from the stage when the suit was pending, i.e., the stage of the cross-examination of the witnesses of the plaintiffs. It is in these circumstances, no harm and prejudice would be caused to the plaintiffs in case the attesting witness to the agreement to sell is examined, particularly when there is no written statement.

Keeping in view of the aforementioned facts, I do not intend to differ with the findings rendered by the trial Court. The same cannot be said to be without jurisdiction.

The revision petition stands dismissed.

December 15, 2015
ramesh

(AMIT RAWAL)
JUDGE